## PUBLISHING – SINGLE SALES FACTOR APPORTIONMENT

## **SPECIAL REGULATION 3A**

When a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined using the apportionment and allocations rules set forth below.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
  - a) In General: Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to §39-22-303.5, C.R.S, and, where applicable, §39-22-303.5(4)(d), C.R.S. and regulations adopted thereunder.
  - b) Allocation of non-business income. Income shall first be categorized as to "business" or "nonbusiness" income pursuant to regulation 39-22-303.5.1A and nonbusiness income will be directly allocated to specific states in accordance with §39-22-303.5(5) and regulations thereunder. Business income will be apportioned to those states in which business is conducted based on the apportionment factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the amount of nonbusiness income allocated to Colorado plus (2) the amount of business income attributable to Colorado.
  - c) **Definitions:** The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.
    - i) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.
    - ii) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed materials.
      Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

## d) Apportionment of Business Income.

i) Sales Factor Denominator. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be otherwise excluded.

- ii) Sales Factor Numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:
  - (1) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.
  - (2) Except as provided in subparagraph (3) of this paragraph, gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

The circulation factor for an individual publication shall be determined by reference to the rating statistics of reputable ratings services, provided that the sources selected are consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

The circulation factor shall fairly reflect the ratio that the taxpayer's instate circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere.

- (3)When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the executive director may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph d)ii)(2). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.
- (4) Except as provided for in §39-22-303.5(4)(d), C.R.S. regarding publishers of magazines or periodicals, if the purchaser or subscriber is the United States Government or if the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales

factor for such State, shall be included in the numerator of the sales factor of this State if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this State.

2) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.